Rubenstein v. Frey
Doc. 49 Att. 5

EXHIBIT "E"

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LAW OFFICES
BRODSKY & SMITH, LLC

240 MINEOLA BLVD
MINEOLA, NY 11501

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FAX [illegible]
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April 12, 2007

VIA FEDERAL EXPRESS

Thomas Mars, General Counsel
Wal-Mart Stores, Inc.
Walmart.com, subsidiary of Wal-Mart Strores, Inc.
702 Southwest 8th Street
Bentonville, Arkansas 72716-0215

Re: "*A Million Little Pieces*" Litigation, 06-mdl-1771 (U.S.D.C. SDNY).

Dear Mr. Mars:

We are court appointed Class Counsel in the above referenced matter pending in the United States District Court for the Southern District of New York. We represent the class of consumers who purchased the book *A Million Little Pieces* from the date of the book's initial publication through and including January 26, 2006. As you may be aware from press reports, a classwide settlement has been reached between the Plaintiffs' Class, the publisher (Random House), and the book's author (James Frey). A motion for preliminary court approval of this settlement is currently pending before Judge Richard J. Holwell.

As part of the preliminary approval process, the Court has been asked to approve a plan to notify class members of the settlement. We have sought approval of a notice plan that provides for (1) publication of the notice in over 900 newspapers across the country; (2) the establishment of a dedicated website (www.amlpsettlement.com) where class members can obtain information about the settlement and print claim forms; and (3) direct mailing of notice by Random House to customers who purchased the book directly from Random House's website.

However, the Court has requested that Class Counsel inquire of some of the larger retail book sellers regarding their willingness to voluntarily provide additional notice to their customers. To assist us in advising the Court, we would like to know the answers to the following questions:

1. Would your company be willing to voluntarily deliver (by e-mail or otherwise) the class notice directly to your customers who purchased the book? If not, why not?

2. Approximately what percentage of your book sales are made at your brick and mortar stores? With respect to those sales, do you have any records that would allow your company to determine who purchased the book (*i.e.* any records from any frequent buyers' program during the relevant period – prior to January 27, 2006)? Are there any restrictions on the use of this information?

3. With respect to any sales made through your online operations, do you have any records that would allow your company to determine who purchased the book? Are there any restrictions on the use of this information?

4. With respect to your online operations, do you routinely e-mail materials to your customers?

5. As an alternative to any direct notice, would your company be willing to

   a) place a banner-style ad somewhere on your website that links interested customers to our dedicated settlement website, or

   b) place a written notice at the checkout counters at each of your brick and mortar stores for a specified period of time notifying class members of the settlement.

6. With respect to any of the efforts above, would there be any cost or burden associated with your efforts? If so, please give us an estimate of the cost.

We are required to provide the Court with the results of our inquiry by April 27, 2007. Accordingly, we would appreciate a written response to this correspondence no later than April 20, 2007, if at all possible. In the interim, should you wish to speak with us regarding these issues, we remain available at your convenience. We appreciate your attention to this matter and look forward to your response.

Very truly yours,

BRODSKY & SMITH LLC

By: ______________________
Evan J. Smith, Esquire
240 Mineola Boulevard
Mineola, NY 11501
(516) 741-0626

LARRY D. DRURY, LTD.

By: ______________________
Larry D. Drury, Esquire
205 West Randolph Street, Suite 1430
Chicago, IL 60606
(312) 346-7950

Co-Lead Counsel for Class

EJS/jf
Enclosures
cc: Mark B. Blocker, Esquire (Counsel for Random House)
Sidley Austin – Illinois Office (via regular mail)

Derek J. Meyer, Esquire (Counsel for James Frey)
McDermott Will & Emery – Illinois Office (via regular mail)

FedEx Express *US Airbill*

FedEx Tracking Number 8605 6397 9118

Form ID No. 0215 — **Sender's Copy** — H43

1 From Please print and press hard.

Date 4-12-07 — Sender's FedEx Account Number 2423-0938-3

Sender's Name Evan Smith — Phone (610) 667-6200

Company BRODSKY& SMITH LLC

Address 333 E CITY AVE STE 602 — Dept./Floor/Suite/Room

City BALA CYNWYD — State PA — ZIP 19004

2 Your Internal Billing Reference — First 24 characters will appear on invoice. — OPTIONAL

3 To

Recipient's Name Thomas Mars — Phone ( )

Company Wal-Mart Stores

Recipient's Address 702 Southwest 8th Street — We cannot deliver to P.O. boxes or P.O. ZIP codes. — Dept./Floor/Suite/Room

Address — To request a package be held at a specific FedEx location, print FedEx address here.

City Bentonville — State AK — ZIP 72716-0215

0351168330

Store your addresses at fedex.com
Simplify your shipping. Manage your account. Access all the tools you need.

4a Express Package Service — *Packages up to 150 lbs.*

- [ ] FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [x] FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.
- [ ] FedEx First Overnight — Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.
- [ ] FedEx 2Day — Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

FedEx Envelope rate not available. Minimum charge: One-pound rate. — * To most locations.

4b Express Freight Service — *Packages over 150 lbs.*

- [ ] FedEx 1Day Freight* — Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx 2Day Freight — Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx 3Day Freight — Third business day.** Saturday Delivery NOT available.

* Call for Confirmation. — ** To most locations.

5 Packaging

- [x] FedEx Envelope*
- [ ] FedEx Pak* — Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.
- [ ] FedEx Box
- [ ] FedEx Tube
- [ ] Other

* Declared value limit $500.

6 Special Handling — Include FedEx address in Section 3.

- [ ] SATURDAY Delivery — NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
- [ ] HOLD Weekday at FedEx Location — NOT Available for FedEx First Overnight.
- [ ] HOLD Saturday at FedEx Location — Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods? One box must be checked.

- [ ] No
- [ ] Yes — As per attached Shipper's Declaration.
- [ ] Yes — Shipper's Declaration not required.
- [ ] Dry Ice — Dry Ice, 9, UN 1845 ___ x ___ kg
- [ ] Cargo Aircraft Only

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

7 Payment *Bill to:* — Enter FedEx Acct. No. or Credit Card No. below.

- [x] Sender — Acct. No. in Section 1 will be billed.
- [ ] Recipient
- [ ] Third Party
- [ ] Credit Card
- [ ] Cash/Check

FedEx Acct. No. Credit Card No. — Exp. Date

Total Packages	Total Weight	Total Declared Value†
		$ .00

†Our liability is limited to $100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. — FedEx Use Only

8 *NEW* Residential Delivery Signature Options — If you require a signature, check Direct or Indirect.

- [ ] No Signature Required — Package may be left without obtaining a signature for delivery.
- [ ] Direct Signature — Anyone at recipient's address may sign for delivery. Fee applies.
- [ ] Indirect Signature — If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. Fee applies.

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WAL★MART®
LEGAL DEPARTMENT

SUSAN E. SCHELL
702 S.W. 8TH Street
Bentonville, Arkansas 72716
Fax (479) 277-5991
Phone (479) 204-8831

Susan.Schell@walmartlegal.com

April 20, 2007

Via Facsimile/516-741-0626

Evan J. Smith, Esquire
Brodsky & Smith, LLC
240 Mineola Blvd.
Mineola, NY 11501

Larry D. Drury, Esquire
Larry D. Drury, LTD
205 West Randolph Street, Suite 1430
Chicago, IL 60606

Re: "A Million Little Pieces" Litigation

Dear Messrs. Smith and Drury:

I write in response to your April 12, 2007 letter to Thomas Mars, General Counsel to Wal-Mart Stores, Inc. ("Wal-Mart) concerning Wal-Mart's ability to assist you in notifying class members of the settlement in the litigation referenced above.

In answer to your questions, book sales are a small part of Wal-Mart's comprehensive retail business. Wal-Mart values and respects the privacy of its customers, and does not routinely track the book purchases of individual customers.

Given the nature of Wal-Mart's operations, it would not be practical to "place a banner-style ad" on our website, or to "place a written notice at the check out counters" of our more than 4000 stores. While Wal-Mart appreciates your need to effectively notify the class members, at this time, Wal-Mart is unable to assist you.

Sincerely,

Susan E. Schell

Susan E. Schell
Assistant General Counsel
Litigation Support Group - Commercial Litigation